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**REMARKS****Pending Claims:**

Claims 13-16 and 23-28 are pending.

**Rejections Under 35 U.S.C. 102(e):****Imran U.S. Patent No. 6,535,764**

Claims 13, 14 and 23-28 stand rejected under 35 U.S.C. 102(e) as being anticipated by Imran et al, U.S. 6,535,764. Applicants traverse this rejection with Declaration under 37 CFR 1.132 stating that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another."

**Swoyer et al U.S. Patent No. 6,754,536**

Claims 13, 14, and 23-27 stand rejected under 35 U.S.C. 102(e) as being anticipated by Swoyer et al, U.S. Patent No. 6,754,536. Examiner states,

"as to Claim 14, the beam 72 of Swoyer acts as an attachment device for the housing (to make electrode contact via the memory alloy)

**Claims 13, 14, 23 and 24.**

Swoyer does not disclose a fixation device configured to be positioned within a portion of the intestinal tract. The intestinal tract is generally known to extend from the small intestine through the bowel and to the anus.

Swoyer further does not include at least one lead electrically coupled to the at least one electrode and configured to extend from the fixation device in the intestinal tract into the stomach and to be coupled to the electronics housing. In other words, Swoyer does not disclose a lead that could operate to extend from an electrode that is within the intestinal tract, through the

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pylorus, and into the stomach where it is attached to an electronics housing. Claim 14 depends from claim 13 and therefore for the same reasons is not anticipated by Swoyer et al.

Claims 25-28

Swoyer does not disclose a fixation device and electrode configured to be positioned within a portion of the intestinal tract. The intestinal tract is generally known to extend from the small intestine through the bowel and to the anus.

Swoyer further does not include an electronics housing configured to be positioned in the stomach and to be in electrical communication with the electrode in the intestinal tract. In other words, Swoyer does not disclose a device that could include an electrode that is within the intestinal tract, and an electronics unit that is in the stomach where the electronics unit in the stomach is in electrical communication with the electrode in the intestinal tract. Claims 26-8 depend from claim 25 and therefore for the same reasons are not anticipated by Swoyer et al.

Rejections under 35 U.S.C, 103(a)

Claims 15 and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0125788 to Long in view of U.S. Patent No. 6,591,137 to Fischell et al. Examiner states:

Fischell et al disclose the invention substantially as claimed but for the anchoring of electrodes inside the duodenum, specifically with an expandable member. Long teaches a GI tract stimulator that can be anchored along the GI tract at a desired location with an expandable stimulator, the benefits being the

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technique for insertion is less invasive and the radial electrode contact provides better stimulation. As such it would have been obvious to have incorporated the stimulation mechanism of Long into the Fischell et al system in order to effect improved stimulation to the target GI region.

Column 5, lines 40-56 of Fischell state:

Electrode set 14 with electrodes 15G and 15H is located on the surface of the duodenum. The electrodes 15G and 15H are connected to the control module 20 by the leads 17G and 17H. Sutures 9 surgically placed during system implantation, hold the electrodes 15G and 15H against the surface of the stomach...The electrode set 14 is used with the present invention to provide electrical stimulation to encourage contraction of the duodenum to assist in emptying the stomach...The electrode set 14 can also be used to produce gastrointestinal hurry speeding the passage of food through the gastrointestinal tract to reduce nutrient uptake for obese patients.

Fischell et al describe a device and method that treat obesity by "hurrying" food through the digestive tract. Fischell does not teach that the stimulation with electrode set 14 effects the opening or closing of the pylorus. Because Fischell proposes stimulating to help empty food from the stomach, it is believed by Applicants to imply the teaching that stimulating the duodenum creates a pressure gradient to draw food out of a stomach where the pylorus is opening because of the activity in the stomach.

The present invention discloses using retrograde stimulation to cause the pylorus to close the pylorus. As claim 15 recites, the method involves creating gastric retention of food, contrary to Fischell which teaches hurrying food through the gastrointestinal

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tract to reduce absorption of the food.

In conclusion, Applicant submits that claims 13-16 and 23-28 are patentably distinct over the prior art of record and are therefore in condition for allowance.

Respectfully submitted,

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